UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,675	12/31/2003	Randall J. Macbeth	MFCP.110230	2766

45809   7590   07/28/2008
SHOOK, HARDY & BACON L.L.P.
(c/o MICROSOFT CORPORATION)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

EXAMINER
MADAMBA, GLENFORD J

ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
07/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2008*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18,20-30 and 32-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18, 20-30 and 32-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All   b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1.   This action is in response to remarks filed by Applicant's representative on April

24, 2008.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April

24, 2008 has been entered.

Response to Amendments and Remarks

2. With respect to Applicant's latest submission, the Office has given full consideration

to the claim amendments and accompanying remarks filed on April 24, 2008, but are

now considered moot in light of the following grounds of rejection provided for the

current / amended set of claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 5, 6, 17, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being

unpatentable over DeBettencourt et al (hereinafter DeBettencourt), U.S. Patent

Publication US 2002/0042823 A1 in view of Barth et al (hereinafter Barth), U.S. Patent

Publication US 2006/0123012 A1.

As per Claims 1, 13, and 25, DeBettencourt in view of Barth discloses a system for

monitoring a networked computer service for fault recovery [Abstract], comprising:

an input interface (e.g., Webspective Console 304) [Figs. 7-9] to receive

network status data (e.g., webserver 'status information', such as server availability and

load) [0044] (i.e., CPU idle time) [Fig. 8] (e.g., Load Metric) [Fig. 12a] from a network

monitor (e.g., Manager 110 with Watcher 111) monitoring a computer services network

(e.g. web service system 90) [Fig. 1];

a control engine (e.g., Interceptor 120), the control engine communicating with

the input interface to receive the network status data and automatically generate control

commands to dynamically adjust the set of features based on a fault condition (e.g.,

webserver, application and/or component error or failure) [0029] [0099] in the network

status data for one or more features within the set of features (one or more of a plurality

of webservers, applications and/or components for responding to a request for a web

page or set of webpages) [0032-0033]; and

an output interface (e.g. Webspective Console / Viewer) [Figs. 6 & 9],

communicating with the control engine (e.g., Interceptor 120) and the computer services

network (web service system 90)), the output interface communicating the control

commands (e.g., redirection, activation, deactivation and/or recovery of the webservers,

applications, and/or components) to the computer services network to dynamically

adjust the set of features by deactivating the one or more features having a fault

condition while maintaining active features in the set of features to continue to provide

users with a portion of the networked computer service [Barth: 0009-0013] [0028-0033]

[0089-0090] by providing the network computer service with only the active features

while the one or more features having a fault condition are at least temporarily removed

from the networked computer service [0046-0048] (e.g., enabling / "START" or disabling

/ "KILL of webserver 102 or an application for "temporary adjustment") [0051] [0079]

[Figs. 2 & 3]

Additionally, while DeBettencourt discloses substantial features of the invention,

as cited above, the additionally recited feature of dynamically adjusting the set of

features by deactivating the one or more features having a fault condition while

maintaining active features in the set of features to continue to provide the networked computer service is more expressly disclosed by Barth.

Barth discloses as his invention <u>a method and apparatus for a *dynamic information connection engine*. User actions are detected on at least one client system, and in response, a determination is made whether the user is *searching* for supported information</u>. When the user is searching for supported information, information is extracted electronically from a third party web site direct supplier connections, and intermediate databases. Potential information suppliers are automatically selected in response to the detected user search. <u>Queries are formulated from the user search and transferred to each selected supplier over a network coupling</u>. The queries include a request for information. <u>Responses are received from the suppliers, and the responses are used to generate a result list for the user. The result list includes information and query status information. Further, an *electronic link* may be provided to a web site of each supplier from which the information was derived</u> [Abstract].

In particular Barth discloses the above additionally recited feature of dynamically adjusting the set of features by deactivating the one or more features having a fault condition while maintaining active features in the set of features to continue to provide the networked computer service [0009-0013] [0028-0033] [0089-0090] (i.e., 'deactivating' *electronic links {URLS}* and/or *purchasing controls* or feature of the resultant display when the search results have a 'fault', such as when the search results are time-sensitive and are no-longer 'valid') [0112-0113] [Figs. 2-5].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine and/or modify DeBettencourt's invention with the above additional recited feature, as disclosed by Barth, for the motivation of providing a system that efficiently gathers and evaluates information from multiple electronic sources and presents relevant information to potential buyers, sellers, or traders [0003] [0012].

Claims 13 and 25 recite the same limitations as claim 1, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 2, 14, and 26, DeBettencourt discloses a system according to claim 1, wherein the computer services network comprises an Internet service (web service system 90) [Fig. 1].

Claims 14 and 26 recite the same limitations as claim 2, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 3, 15, and 27, DeBettencourt in view of Barth discloses a system according to claim 2, wherein the Internet service comprises a search service.

While DeBettencourt discloses substantial features of the invention, as cited above, the additionally recited feature of the system wherein the Internet service comprises a search service is expressly disclosed by Barth in a related endeavor.

Barth discloses as his invention <u>a method and apparatus for a *dynamic*</u> <u>*information connection engine*. User actions are detected on at least one client system,</u>

and in response, a determination is made whether the user is *searching* for supported

information. When the user is searching for supported information, information is

extracted electronically from a third party web site direct supplier connections, and

intermediate databases. Potential information suppliers are automatically selected in

response to the detected user search. Queries are formulated from the user search and

transferred to each selected supplier over a network coupling. The queries include a

request for information. Responses are received from the suppliers, and the responses

are used to generate a result list for the user. The result list includes information and

query status information. Further, an *electronic link* may be provided to a web site of

each supplier from which the information was derived [Abstract]. In particular Barth

discloses the above additionally recited feature of the system wherein the Internet

service comprises a search service (e.g., search system) [0028]

It would thus be obvious to one of ordinary skill in the art at the time of the

invention to combine and/or modify DeBettencourt's invention with the above additional

recited feature, as disclosed by Barth, for the motivation of providing a system that

efficiently gathers and evaluates information from multiple electronic sources and

presents relevant information to potential buyers, sellers, or traders [0003] [0012].

Claims 15 and 27 recite the same limitations as claim 3, are distinguished only by

their statutory category, and thus rejected on the same basis.

As per Claims 4, 16, and 28, DeBettencourt discloses a system according to claim 1, wherein the network status data comprises at least one of page latency data, processor utilization data, connection data and storage data (e.g, "buffer is full") (e.g., CPU Idle time, webserver load, memory / buffer capacity, network connection, web page response time) [0064] [0067] [0072] [0074].

Claims 16 and 28 recite the same limitations as claim 4 are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 5, 17, and 29, DeBettencourt discloses a system according to claim 1, wherein the fault condition comprises a failure of the network status data to meet a performance threshold (e.g., performance of web service system) [Abstract] [0029-0030][0044].

While the combination of DeBettencourt and Barth disclose substantial features of the invention such as the system of claim 1, and in particular a system for monitoring a networked computer service for fault recovery, the additional feature of the system wherein the fault condition comprises a failure of the network status data to meet a performance threshold is more expressly disclosed by DeBettencourt in a related endeavor.

DeBettencourt discloses as his invention a web service system that allows a system operator to manage multiple web servers [0001]. In particular, DeBettencourt discloses the additional feature of the system wherein the fault condition comprises a

failure of the network status data to meet a *performance threshold* (e.g., error and/or

component failure thresholds) [Abstract].

It would thus be obvious to one of ordinary skill in the art at the time of the

invention to modify the combined invention of DeBettencourt and Barth with the added

feature of the system wherein the fault condition comprises a failure of the network

status data to meet a *performance threshold*, as disclosed by DeBettencourt, for the

motivation of providing management capability in automatic error recovery and

recovery from component failures or network environmental problems [Abstract] [0002]

[0010].

Claims 17 and 29 recite the same limitations as claim 5, are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 6, 18, and 30, DeBettencourt discloses a system according to claim 5,

wherein the performance threshold comprises a minimum response time for a user of

the networked computer services (e.g., client response time) [0004].

Claims 18 and 30 recite the same limitations as claim 6, are distinguished only by

their statutory category, and thus rejected on the same basis.

As per Claims 8, 20, and 32, DeBettencourt discloses a system according to claim 7,

wherein the control engine reactivates at least a portion of the one or more features

upon restoration of predetermined network status data (e.g., 'revival' or reactivation of

webserver into the webserver availability 'list') [0103].

Claims 20 and 32 recite the same limitations as claim 8, are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 9, 21, and 33, DeBettencourt discloses a system according to claim 7,

wherein the control engine alters the operation of another service in compensation for

the affected service [0095-0098]].

Claims 21 and 33 recite the same limitations as claim 9, are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 10, 22, and 34, DeBettencourt discloses a system according to claim 1,

wherein the control engine comprises a rules-based decisioning engine (e.g.,

'redirection rules' or policy) [0083].

Claims 22 and 34 recite the same limitations as claim 10, are distinguished only

by their statutory category, and thus rejected on the same basis

As per Claims 11, 23, and 35, DeBettencourt discloses a system according to claim 10,

wherein the rules-based decisioning engine interfaces to a control database (e.g., web

server interface) [0078-0083]

Claims 23 and 35 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 12, 24, and 36, DeBettencourt discloses a system a system according to claim 1, further comprising a manual override selector, the manual override selector permitting an operator to override the control commands generated by the control engine (e.g., Manager 110) [0051].

Claims 24 and 36 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

Conclusion

1. The Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenford Madamba whose telephone number is 571-272-7989. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Wallace Martin can be reached on 571-272-3440. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

/John Follansbee/   Glenford Madamba
Supervisory Patent Examiner, Art Unit 2151   Examiner
                                                              Art Unit 2151